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U.S. Department of Energy

Office of General Counsel

CC-52 RE: 62 FR 68272

1000 Independence Avenue SW Price-Anderson Act

Washington, D.C. 20585

Dear Madam or Sir:

We have just been notified of the December 31, 1997, Federal Register Notice of opportunity for public comment on the Price-Anderson Act (PAA). Please accept for the Department's record in this matter the following comments submitted by the Pennsylvania-based Environmental Coalition on Nuclear Power (ECNP), a not-for-profit public-interest citizens' organization that has been actively involved in a broad range of nuclear energy and radioactive waste issues since 1970. This involvement has included participation as intervenors in NRC licensing proceedings for most of our state's power reactors _ and as the legal representatives of Harrisburg area residents in the 1977 NRC ASLB Operating License hearings for Three Mile Island, Unit 2, and -- in a rare event -- we provided testimony in the NRC proceedings on Price- Anderson-related Declaration of Extraordinary Nuclear Occurrence (ENO) following the March 28, 1979, accident. We have testified before the Congressional Joint Committee on Atomic Energy and its successors at the time of prior renewals of Price-Anderson.

Our responses to the 34 questions posed by the Department will be truncated due to time. We will try to elaborate on our comments and recommendations in conjunction with responses during the reply period, as may be appropriate.

1. Should DOE PAA indemnification be continued with modification?

No. ECNP believes that the Price-Anderson Act has outlived its initial purpose, which was to foster development of commercial nuclear power. It is time for this law to expire, in an era that promotes free market competition in the electric utility industry. Liability in any future nuclear-related accidents that might be covered by Price-Anderson at any DOE facilities, we believe, will be met by the American taxpayers anyway. PAA limitation of liability, in our view, encourages careless, unsafe practices on the part of DOE contractors _ as is abundantly demonstrated in the history of operation of DOE's nuclear weapons production facilities throughout the nation. Let the Price-Anderson Act expire.

2. Should DOE PAA indemnification be eliminated or made discretionary...?

DOE PAA should be eliminated. See Response 1 above. However, the Department must assure that all members of the public who experience health or genetic injuries or property damage receive just compensation.

3. Should treatment of "privatized arrangements" differ from traditional DOE "management and operating" contracts?

DOE contractors and subcontractors must be required to bear financial accountability for any offsite contamination and damages they cause to persons and property, and responsibility for the

costs of any additional contamination they may cause at DOE sites. All nuclear energy activities of the Department should, now in the post-Cold War era, be directed to remediation. Contractors are now carrying on privatized activities _ which they apparently have wanted and for which they must assume liability. ECNP suggests that all on- and off-site contractual arrangements should be treated in this manner.

4. Should there be changes in PAA coverages in the current system with respect to DOE activities under NRC licenses?

ECNP recommends that PAA indemnification be eliminated altogether. Existence of DOE activities conducted under an NRC license should make no difference. If a "free market" is desired, then a free market it should be, complete with the risks and liabilities supposedly voluntarily assumed by any corporation. However, again, members of the public who are injured must be fully compensated by the entity responsible for the damage to person or property.

5. Should DOE PAA indemnification continue to provide omnibus coverage or be restricted?

See responses above. The Congress should simply allow PAA to end. DOE and its contractors, whether they call themselves for profit or not, must finally take accountability for the damage they cause for others.

6. If no DOE PAA, what should be the alternatives?

In our opinion, financial liability is the problem of the institution that seeks a profit _ or the governmental agency that conducts the activity. Private citizens have to pay for automobile and homeowner's insurance to cover liability. So also should a DOE contractor or supplier. It's known as no free ride, or lunch. The institution should be held accountable and liable for all operational costs, insurance coverage, risks, and protection of potential claimants. In the case of nuclear facilities, this responsibility must extend to damages consequent upon mismanagement or release of radioactive and other hazardous wastes associated with the activities.

7. To what extent would elimination of DOE PAA indemnification affect ability of DOE to perform its mission?

Since neither DOE nor many of its contractors have a history of safe, clean operations in the past, a threat of actually being held liable for the damage they cause would be salutary. They might at last clean up their act, to the infinite benefit of Americans and their environment.

8. Would elimination of DOE PAA indemnification affect willingness of contractors to perform for DOE?

If lack of PAA alters the willingness of any contractor, then that contractor is clearly far too untrustworthy to be hired. In the business world, such a company, in the absence of subsidies, would go bankrupt and richly deserve to do so.

9. Would lack of DOE PAA coverage affect the ability of contractors to obtain goods and services from suppliers?

Here as well the integrity of the suppliers is at issue. The author, Arthur Miller, provided us with the definitive answer to this question. If their product is unsafe or otherwise unable to perform, then the company should take responsibility for any resultant damages.

10. Would no PAA affect claimants' ability to receive compensation for damages from a DOE nuclear activity?

In the event of a major nuclear accident, under provisions of the Price-Anderson Act, it has always been assumed that the Congress would step in to provide the funds _ or some minimal portion of funds _ necessary to compensate the victims. However, the history of aid and just compensation for persons affected by either industrial accidents or injuries caused by governmental actions leads us to conclude that the public is cheated of justice either way. There is absolutely no excuse, however, for continuing to let DOE's contractors off the hook scot free.

11. Is private insurance available, and at what cost, with what coverage , for what types of activities, new or existing _ or should DOE require contractors to have private insurance?

We won't have a reliable answer to the first set of questions until the real world market is put to the test, to find out if the insurance industry now believes nuclear facilities are a good risk. An argument can be made that DOE (i.e., taxpayers) should assume the financial burdens associated with old contaminations, but in our opinion, DOE's past contractors also bear a heavy guilt for earlier contamination, bred of their arrogance of secrecy and unmonitored power. As public demand grows to improve and speed the remediation of all DOE facilities, the sooner this putative free market economy is tested, the better. And, yes, absolutely DOE should require all its contractors and their underlings to obtain insurance.

12. Should DOE PAA indemnification for U.S. nuclear accidents be increased above the current c. $8.9 billion, or decreased?

It should be abolished. The wording of this question begs the question and inappropriate. It assumes that PAA should and will be renewed. No; the level of indemnification should not be increased because it should not exist at all. These costs would be astronomical. But they must no longer be ignored, as both military and commercial nuclear facilities age and fail; nor the American people be deceived about such disastrous economic impacts.

13. Should the $100 million indemnification for "incidents" outside the U.S. be changed?

First, an accident is not an "incident." See the answer above. Even though our government and corporations are irresponsible in their attitudes toward safety and well-being of our own people, they have no right to disregard the sovereign rights of others.

14. Should the aggregate public liability limit be eliminated? How to fund resulting unlimited liability? Is there a difference between DOE or NRC-licensed activity?

There should be no limit on liability, whether from DOE or NRC-licensed nuclear

accident _ not "incident." The funding should be a function of the much-touted free market. If no one is willing to assume the risk, then all nuclear facilities should be closed and this military and industrial enterprise ended. There will remain an enormous worldwide task of

decontamination and waste sequestration, and it will be very costly.

15. Should DOE PAA accident indemnification cover contractors or others for any kind of negligence or for willful misconduct?

No, to all of the above. Unquestionably, the government should seek and require, on threat of extremely severe financial penalties and prison sentences to be levied on the responsible corporations and on its management decision- makers. When the health and safety of innocent

members of the public have been damaged by the considered decisions and actions of management, the "corporate veil" needs to be shredded.

16. Should DOE PAA be extended to cooperative agreement or grant activities?

No. Let those who choose to take the risk do so, without protection from liability for their actions or mistakes.

17. Should transportation activities be subsidized by PAA?

No. Those who own the radioactive materials or wastes being transported, or government agencies, and the shippers must be required to accept full liability.

18. Applicability of DOE PAA to DOE clean-up sites? How affected by CERCLA, etc.?

Once again, our view is that all damages incurred by members of the public as a result of DOE nuclear facility operations, including decommissioning and decontamination, should be fully compensated by the responsible person. Sadly, that will be the American people through exorbitant taxation to foot the bills that result from the DOE bureaucratic managers who failed to exercise adequate oversight of their contractors. In turn, the programs they were carrying out were authorized by the legislative and executive branches and, in the case of PAA, condoned by the judicial branch as well. CERCLA does not solve the problem when every penny of compensation is challenged and delayed by the lawyers for polluters.

19. Applicability to mixed waste?

Mixed waste poses special problems, but DOE and its contractors should be held liable for damages caused by exposures to these wastes as well. Mixed waste generation is a result of their activities, including those produced in the course of clean-up activities.

20. Should the definition of "nuclear incident" be expanded to include DOE actions outside the U.S. if no U.S. nuclear material is involved, such as in nuclear risk reduction and safety improvement?

The term "incident" should be banned from the lips of all in DOE. A rose is a rose, a skunk a skunk, and an accident an accident. All DOE staff (and NRC and EPA and rest of the government's bureaucracy, not to mention the industry they supposedly regulate) should be required to spend an hour a day learning the dictionary meanings of the words they use. We find this question harder to respond to, but DOE can no more shirk its culpability abroad than at home, nor in presumably positive activities.

21. Applicability of tort law in U.S. territorial waters? Based on state tort law?

Territorial seas should be treated as is national space. No limits on liability for nuclear accidents or other contamination by DOE or its contractors. Since the waters ignore boundaries, international law may also come into play. This issue becomes of greater importance as trans-boundary trade in nuclear materials and wastes is encouraged by international trade agreements.

22. Effects on occurrences in U.S. "Exclusive economic zones"?

See responses above. How can economic globalization be ignored?

23. Continue reliance on state tort law? Uniform rules be modified? Additional uniform rules be imposed on causation and damage?

ECNP argues that Federal preemption over States and Municipalities is inappropriatewith respect to nuclear energy and its impacts (domestic, commercial, military, international). In our view, Federal uniformity of regulations should exist primarily as a baseline for protection, a minimum level. States should be able to set more _ but not less _ restrictive rules and regulations, as should local governments, depending on a variety of factors. These may include proximity and density of population, number and types of nuclear and other hazardous facilities, situations and concerns of neighboring political units, and demands for protection from constituents and residents.

24. Should the Act be modified to be consistent with legal approaches in other countries?

To the extent that other nations assure that victims may recover full compensation for personal or property damages, expenses, and losses, U.S. law should also do so. The objective is to divest the nuclear energy enterprise, both governmental and commercial, of the special protection afforded by the liability limitation subsidy.

25. Should administrative and judicial proceedings and procedures under the Act be modified?

Yes, indeed! Our organization has participated in numerous administrative law and regulatory proceedings of the agencies in question. They are, in our opinion, a perversion of the nation's principles of justice. They must be reformed, to require the highest standards of impartiality and respect for the citizens who are affected by the improper and sometimes illegal actions of government and commercial industry in violating even the weak laws and regulations applicable to their activities.

26. Modifications of types of claims covered by PAA?

Price-Anderson Act, if there is to be one at all, should cover all types of claims of injury or damage to person or property, including delayed effects, such as latent cancers, and genetic defects and non-fatal illnesses in addition to cancers and leukemia. Damages to property may range from occupancy interdiction to contamination that precludes productive uses to loss of value; all should be covered, with application of rebuttable presumption by agency, contractor, or licensee.

27. Modifications of PAA to facilitate prompt payment and settlement of claims?

Whether or not Price-Anderson is renewed, the Congress is capable of legislating

requirements for prompt payout to victims and settlement of claims. However, it is essential that there be adequate provision for the filing of later claims for persons who may experience delayed health impacts of radiation exposures _ latent cancers; late-appearing and diagnosed, or chronic illnesses _ or adverse genetic effects that may be identified belatedly in the following generations of children born to those directly exposed.

28. Should DOE continue to be authorized to issue civil penalties?

ECNP has concluded that stringent enforcement of laws and regulations with regard to corporate and governmental bureaucratic decision-makers may be the only way to begin to bring abuses of public health and safety and the environment to a halt. Not only should the Federal

government be enabled to assess penalties, but also the time has arrived for those who are responsible for ordering the actions that result in irreversible contamination of the environment and injuries to the health and lives of members of the public should be treated with the same

harsh sentences as are administered to some drug runners, thieves, and other common criminals. We view the actions of knowledgeable management officials to allow pollution as despicable and criminal, deserving of punishment to the fullest extent of the law.

29. To what extent does DOE authority to issue civil penalties affect safe and efficient work of its contractors and agency staff, and contain costs, including private insurances costs?

The present and future mission(and task) of DOE must be primarily to assure and accomplish safe clean-up of DOE nuclear facilities. Having the authority to issue civil penalties should facilitate DOE's ability to encourage its contractors to do their jobs properly. The agency should probably caution its contractors that private insurance will not be inexpensive; that's part of the price of having performed poorly in the past.

30. Should there be a continuing mandatory exemption from civil penalties for some nonprofit contractors? For their for-profit subcontractors and suppliers? For a for-profit partner of a nonprofit contractor?

No. No. No. No exemptions from civil penalties for wrong-doers.

31. Should DOE continue discretionary authority to automatically remit civil penalties for educational nonprofit institutions?

No, and particularly so for those institutions that offer what appears to be uncritical promotional support of the nuclear industry _ what some might call production of biased research. They should not be relieved of penalties if penalties are deserved.

32. Should the maximum amount of civil penalties be modified, and how?

Probably so. Penalties should be scaled to suit the nature, magnitude, and consequences of the violation(s), with highest penalties for actions that lead to injury to humans or premature death and irreversible damage to the biosphere.

33. Should judicial proceedings concerning civil penalties be modified?

Judicial proceedings that either uniformly find for defendants in cases involving violations that affect health, safety, and environment, or that result in levying of civil penalties that are later unobtrusively reduced or waived clearly need to be overhauled. When no penalty is attached to misdeeds, the public's interests are not well served. The history of the Department and its fellow agencies concerned with nuclear energy tends to support that statement. With a new millennium should come a different and better method of conducting the people's affairs.

34. Should criminal penalties be imposed for knowing and willful violations of nuclear safety requirements by individual officers and employees of contractors, subcontractors, and suppliers, and persons not indemnified by Price-Anderson?

Yes, in all instances, and stiff ones.

The Environmental Coalition on Nuclear Power reiterates its recommendation that the Department of Energy recommend in turn to the Congress that the nuclear industry has now matured. Hence, the nuclear industry is no longer in need of the huge subsidy represented by the Price-Anderson Nuclear Insurance Act; but, like certain wayward folk in late middle age, this industry is sorely in need of the self-discipline to consider its approaching old age and demise.

As most aging people, DOE and the industry should be thinking about the legacy they are leaving to their children, and the most valuable legacy would be a world freed of the threats posed by nuclear technologies.

In the new world of a deregulated competitive electric utility industry and of post-Cold War peace, uneasy as both may be, there is also no justifiable excuse for further development of either new nuclear reactors or more nuclear weapons of destruction. Therefore, DOE needs the means to accomplish safe decommissioning and decontamination of nuclear facilities, with full cooperation and assistance from the privately insured service corporations that are competent to do their contractual work right, for maximum protection of the American people. DOE should recommend to Congress that the Price-Anderson Act be ended -- now, not awaiting August of 2002. Doe should urge that generous funding be provided instead to assure the prompt and effective development, demonstration, and installation of technologies that promote and provide safe, clean, affordable, and reliable energy conservation, efficiency, and alternative sources that are scaled to need, distributed (decentralized), and sustainable.

Thank you for attending to our comments and recommendations.

Respectfully submitted,

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Environmental Coalition on Nuclear Power